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No. .

In the
Supreme Court of the United States.

OCTOBER TERM, 1980.

STATE OF RHODE ISLAND,
PETITIONER,

v.

RALPH DEMASI AND LAWRENCE M. LANOUE,
RESPONDENTS.

Petition for a Writ of Certiorari to the Supreme Court of the State of Rhode Island.

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Question Presented.

Whether the Supreme Court of Rhode Island used the correct federal constitutional standards in excluding 500 pounds of gold and silver jewelry findings from evidence on the basis of illegal detention under *Wong Sun* v. *United States*, 371 U.S. 471 (1963), where a judicial magistrate issued a warrant to search a car which had been occupied by three men and had been observed by a police officer at 4:10 A.M. in an industrial area. The car appeared to be heavily loaded and its driver attempted to elude the police officer before he signaled the vehicle to pull over.

Table of Contents.

Opinion below	1
Jurisdiction	2
Constitutional provision involved	2
Fourth Amendment	2
Statement of the case	2
Prior proceedings	2
Factual background	3
Reasons for granting the writ	6
I. The decision below rests upon the Constitution of the United States	6
II. The court below improperly extended the requirements of Terry v. Ohio, 392 U.S. 1 (1968), to a situation where the police had probable cause to stop the respondents	6
III. The continued detention after Lanoue produced valid documents was not unreasonable under the circumstances	10
Conclusion	13
Appendix	to follow 13

Table of Authorities Cited.

Cases.

Brown v. Texas, 443 U.S. 47 (1979)	11, 12
Delaware v. Prouse, 440 U.S. 648 (1979)	7
Dunaway v. New York, 442 U.S. 200 (1979)	11n
Jankovich v. Toll Road Comm'n, 379 U.S. 487 (1965)	6
Michigan v. DeFillippo, 443 U.S. 31 (1979)	11n

Ohio v. Gallagher, 425 U.S. 257 (1976) 6

Reid v. Georgia, U.S. , 100 S.Ct. 2752 (1980) 11n

State v. DeMasi, R.I. , 419 A.2d 285 (1980) 1, 3, 4, 6, 7, et seq.

Terry v. Ohio, 392 U.S. 1 (1968) 6, 7, 8, 9, 11

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 7

United States v. Constantine, 567 F.2d 266 (4th Cir. 1977) (per curiam), cert. denied, 435 U.S. 926 (1978) 8

United States v. Cortez, U.S. , 28 Cr. L. 3051 (Jan. 21, 1981) 8, 12

United States v. Davis, 458 F.2d 819 (D.C. Cir. 1972) 8

United States v. Hall, 525 F.2d 857 (D.C. Cir. 1976) 8

United States v. Magda, 547 F.2d 756 (2d Cir. 1976), cert. denied, 434 U.S. 878 (1977) 8

United States v. Purry, 545 F.2d 217 (D.C. Cir. 1976) 8

Wong Sun v. United States, 371 U.S. 471 (1963) 10

STATUTES.

United States Constitution 6, 11
Fourth Amendment 2, 10, 12, 13

28 U.S.C. § 1257(3) 2

Rhode Island General Laws 1956 (1969 Reenactment)
§ 11-8-4 3
§ 11-8-7 3n
§ 11-41-1 3

RULES AND REGULATIONS.

Rhode Island Super. R. Crim. P. 48(a) 3n

MISCELLANEOUS.

Preiser, Confrontations Initiated by the Police on Less than Probable Cause, 45 Albany L. Rev. 57 (1980) 11n

Ringel, Searches and Seizures, Arrests and Confessions, § 13.4 (1979) 8n

Tiffany, L., McIntyre, D., and Rotenberg, D., Detection of Crime (1967) 8n

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RALPH DEMASI AND LAWRENCE M. LANOUE,
RESPONDENTS.

Petition for a Writ of Certiorari to the Supreme Court of the State of Rhode Island.

Opinion Below.[1]

The opinion of the Supreme Court of Rhode Island is reported at R.I., , 419 A.2d 285 (1980) and is attached hereto the Appendix pp. 1a-26a.

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[1] The petitioner is the State of Rhode Island and Providence Plantations. The respondents are Ralph DeMasi and Lawrence M. Lanoue.

Jurisdiction.

The decision of the Supreme Court of Rhode Island was entered on August 29, 1980. The State of Rhode Island filed a timely petition to reargue which was denied by the Supreme Court of Rhode Island on November 20, 1980. This Court has granted one extension of time within which to file a petition for a writ of certiorari, thereby extending the time in which to file the petition to and including February 18, 1981.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

Constitutional Provision Involved.

Fourth Amendment.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statement of the Case.

Prior Proceedings.

Both Ralph DeMasi and Lawrence M. Lanoue were indicted on April 4, 1975. The indictment charged them with breaking

and entering in the nighttime with intent to commit larceny, in violation of R.I. Gen. Laws 1956 (1969 Reenactment) § 11-8-4, and with stealing goods valued in excess of $500, in violation of § 11-41-1.[2] Both filed motions to suppress evidence seized and DeMasi filed motions to dismiss for lack of a speedy trial.[3] Prior to DeMasi's trial in June 1977, his motions were heard and denied. After a jury trial, DeMasi was found guilty on June 15, 1977. Prior to Lanoue's jury-waived trial, his motion to suppress was heard and denied.[4] He was convicted on October 14, 1978. Both defendants filed timely notices of appeal to the Supreme Court of Rhode Island. The appeals were consolidated.

Exceptions to the lower court's rulings on the pretrial motions formed the basis of the appeals. The Supreme Court of Rhode Island concluded that DeMasi was not denied his right to a speedy trial, *State* v. *DeMasi*, R.I. , 419 A.2d 285, 291 (1980), but held that the evidence seized as a result of the search of the automobile should have been suppressed as fruits of an illegal detention. *Id.* at 294-295. Thus, the judgments of conviction were reversed and the cases were remanded to the Superior Court for further proceedings.

Factual Background.

On October 8, 1974, at approximately 4:10 A.M., Officer Thomas Calabro of the Pawtucket Police Department was

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[2] The indictment also charged both respondents with possession of burglar tools in violation of R.I. Gen. Laws 1956 (1969 Reenactment) § 11-8-7. In both cases, the State dismissed the count before trial pursuant to R.I. Super. R. Crim. P. 48(a).

[3] The record indicates that Lanoue filed a motion to dismiss, but did not specify grounds for it.

[4] The transcripts of DeMasi's hearings were incorporated into Lanoue's hearing on his motion to suppress.

traveling east on Division Street in an industrial area of the city when he observed three men in a 1968 Mercury driving south on Industrial Highway near its intersection with Division Street. The car pulled out ahead of him, turned left onto Division Street, and crossed over some railroad tracks. Officer Calabro noticed that the rear end of the Mercury was heavily loaded and testified that "It went over the railroad tracks, sending sparks in the air at that time." As the car crossed the tracks, the passenger in the backseat looked back at the patrol car. Officer Calabro became suspicious and attempted to follow the car as it proceeded to the end of Division Street and turned right onto York Avenue. Officer Calabro testified that he waited for a truck to pass, proceeded to York Avenue, and went down to Burgess Avenue, but

> the vehicle had vanished. I couldn't find it. . . . I took the first left off York Avenue, went down to Burgess Street, and it just happened that their vehicle came out two streets . . . farther south than mine, but running parallel with me. . . . At that time, they took a right and I took a right, and they took a left. I also took a left, and we proceeded now toward Newport Avenue.

State v. *DeMasi*, R.I. , 419 A.2d at 296.

The passenger in the rear seat continued to turn around and look back at Officer Calabro during this time. It appeared as though the driver was attempting to elude him.

When he temporarily lost sight of the car, Officer Calabro radioed Officer Raymond Zwolenski, another Pawtucket police officer in the area, that he wanted the car stopped. Both patrol cars approached the Mercury, turned on their flashing lights, indicated to the car to stop, and the driver pulled over. Both officers approached the stopped vehicle, Calabro on the passenger's side and Zwolenski on the driver's side. Upon re-

quest, Lanoue produced a valid operator's license and registration certificate. The officers also asked the two passengers, DeMasi and Edward Sitko, for identification. Respondent DeMasi identified himself as "Raymond Massey," gave his date of birth, but could produce no identification.[5] Sitko produced a Massachusetts driver's license issued to "Robert Reilly." The officers radioed the station and requested a National Crime Information Center (N.C.I.C.) check on all three names. A few minutes elapsed and the station reported that there was an outstanding Massachusetts arrest warrant for Lanoue. He was arrested at the scene.[6]

The officers radioed for a cruiser to transport Lanoue and DeMasi to the station. Sitko followed the two police vehicles in the Mercury to the station.

About two hours later, the Pawtucket police learned that a burglary had occurred during the night at the Regina Manufacturing Company, and that approximately 500 pounds of gold and silver were missing.[7] At about 9:30 A.M., a judicial magistrate issued a warrant to search the automobile based on an affidavit authorized by Lt. Norman J. Moreau of the Pawtucket Police Detective Division. When the police officers pried open the trunk of the Mercury, they discovered approximately 500 pounds of gold and silver jewelry findings later identified as having been stolen from Regina Manufacturing Company earlier that morning.

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[5] When a cruiser arrived to transport the trio to the station, one of its officers, Daniel Haynes, identified Ralph DeMasi who was known to him as a safecracker with an extensive criminal record.

[6] The record indicates that DeMasi was arrested later at police headquarters after further investigation.

[7] Regina Manufacturing Company is a manufacturer of jewelry located approximately two miles from the location where the Mercury was stopped.

Reasons for Granting the Writ.

I. The Decision below Rests upon the Constitution of the United States.

There are no valid, independent state grounds for the decision reached by the Supreme Court of Rhode Island. Therefore, the doctrine enunciated by this Court in *Jankovich* v. *Toll Road Comm'n*, 379 U.S. 487 (1965), is not applicable. Further, there is no need to remand this case to the state appellate court for clarification of its opinion. *Ohio* v. *Gallagher*, 425 U.S. 257 (1976). Each of the state cases cited by the Supreme Court of Rhode Island in its decision rests upon federal constitutional grounds.

II. The Court below Improperly Extended the Requirements of Terry v. Ohio, 392 U.S. 1 (1968), to a Situation where the Police had Probable Cause to Stop the Respondents.

The Supreme Court of Rhode Island held that DeMasi and Lanoue, while traveling in the Mercury, "[s]hared a legitimate expectation that they would be free from the unreasonable governmental intrusion occasioned by the stop, the request for identification, and the warrant check." *State* v. *DeMasi*, R.I. , 419 A.2d 285 (1980). Therefore, according to the majority opinion, the evidence seized as a result of the search of the car should have been suppressed in the respondents' trials as fruits of an illegal detention. The State asserts that this conclusion was erroneous as a matter of federal constitutional law.

The high court of Rhode Island took the position that

> although the investigatory stop may have focused primarily on Lanoue as the operator of the vehicle, the officers effectively inhibited the free movement of all three individuals in the car to an equivalent extent. Furthermore, at the time Officer Zwolenski requested the documents from Lanoue, he also asked for identification from the two passengers. And the fact that the officers took the names of all three for the NCIC warrant check can leave but little doubt that each was being personally detained.

Id. at 294.

Such a conclusion is contrary to federal constitutional law.

As the dissenter noted, the majority correctly determined that the reasonable-suspicion test which emanates from *Terry* v. *Ohio*, 392 U.S. 1 (1968), is applicable to the facts of the case at bar, but applied the test in a manner that undermines both its underlying theory and purpose. *DeMasi*, R.I. , 419 A.2d at 295 (Kelleher, J., dissenting).

It is well settled that before a police officer may legitimately detain a vehicle for the purpose of investigation, he or she must be able to articulate objective factors that "either the vehicle or an occupant is otherwise subject to seizure for violation of law . . .." *Delaware* v. *Prouse*, 440 U.S. 648, 663 (1979). This test was postulated in such cases as *Terry* v. *Ohio*, 392 U.S. at 1, and *United States* v. *Brignoni-Ponce*, 422 U.S. 873 (1975), and necessitates a balancing of the justifiable governmental interest in crime prevention and detection with the right of an individual to be free from unwarranted police intrusion.

By far the most common type of situation in which a stop on the street for investigation occurs is that in which police officers on patrol observe conduct which they conclude is suspicious. This practice of "field investigation," as it is termed by the police, is viewed by police administrators as a vital aspect of the work of police officers assigned to foot and vehicular patrols.[8] The variety of observed circumstances which might lead to a stop makes it difficult to articulate precisely what situations are sufficiently suspicious to justify a stop.

Nevertheless, *Terry* and its progeny teach that a reasonable suspicion involves a pragmatic analysis from the vantage point of a prudent, reasonable police officer in light of the facts known to him at the time of the detection. See *United States* v. *Cortez*, U.S. , 28 Cr. L. 3051 (Jan. 21, 1981); *United States* v. *Hall*, 525 F.2d 857, 859 (D.C. Cir. 1976); *United States* v. *Davis*, 458 F.2d 819, 821 (D.C. Cir. 1972) (per curiam). A number of factors may contribute to a finding of reasonable suspicion of criminal activity. In addition, factors that alone do not create a reasonable suspicion may, when combined, warrant a reasonable suspicion of criminal activity.[9] Among the factors which may contribute to a reasonable suspicion are: the location in which the conduct occurred, *United States* v. *Magda*, 547 F.2d 756, 768 (2d Cir. 1976), *cert. denied*, 434 U.S. 878 (1977); the time at which the incident occurred, *United States* v. *Constantine*, 567 F.2d 266, 267 (4th Cir. 1977) (per curiam), *cert. denied*, 435 U.S. 926 (1978); the suspicious conduct or unusual appearance of the suspect, *United States* v. *Purry*, 545 F.2d 217, 220 (D.C. Cir.

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[8] See, *e.g.*, the memorandum by the Superintendent of the Chicago Police Department, quoted in L. Tiffany, D. McIntyre and D. Rotenberg, *Detection of Crime* at 16 (1967).

[9] See Ringel, *Searches and Seizures, Arrests and Confessions*, § 13.4 at 13-20 (1979).

1976); and the personal knowledge and experience of the police officer, *Terry* v. *Ohio*, 392 U.S. at 27.

In the case at bar, there were several specific and articulable facts that prompted the officers to stop the automobile. The police observed three men in a 1968 Mercury driving south on Industrial Highway in an industrial area of Pawtucket at four o'clock in the morning. When the vehicle crossed over a set of railroad tracks, Officer Calabro suspected that the Mercury was heavily loaded because the back end scraped the tracks, causing sparks to fly. As the automobile crossed the tracks, the backseat passenger turned his head and looked back at the patrol car. The police officer attempted to follow the Mercury through a series of maneuvers, and it appeared as though the driver was attempting to elude him. During this time, Officer Calabro noticed that the passenger in the backseat continued to turn around and look back.

The majority refers to these facts in its opinion but overlooks the facts that the passenger in the backseat continued to look back at the patrol car and that the police officer believed that the driver was attempting to elude him. Applying standards to the evidence set forth by the United States Supreme Court, interpreting federal constitutional law, the only logical conclusion from the facts is that a police officer such as Calabro could have reasonably suspected that the trio in the Mercury were leaving with property after burglarizing one of the many manufacturing plants located in the industrial area of Pawtucket.

Furthermore, as the dissent points out,

> Officer Calabro typifies the "experienced police officer" . . .. The record indicates that at the time he detained Lanoue and DeMasi he had been patrolling the streets of Pawtucket for seven years. At the suppression hearing, he told the Presiding Justice that when the

> names of the three detainees were transmitted to NCIC, "it came back a hit on Mr. Lanoue." Calabro's "hit" language and his seven years on the street qualified him . . . as one of those officers who, because of their experience, can reasonably "infer from observation of otherwise innocuous conduct that criminal activity is imminent or is taking place."

DeMasi, R.I. , 419 A.2d at 296-297 (Kelleher, J., dissenting).

The State court's conclusion that the police officer lacked reasonable suspicion defeats the meaning of the test. Their conclusion erroneously applies principles of federal constitutional law to the undisputed facts of this case.

III. The Continued Detention after Lanoue Produced Valid Documents was Not Unreasonable under the Circumstances.

The majority below has concluded that under the circumstances, "the detention imposed for the period during which the officers were awaiting the results of the warrant check was an unreasonable governmental infringement of rights protected by the Fourth Amendment." *DeMasi*, R.I. , 419 A.2d at 293. It has reasoned that while traveling in the Mercury, the trio shared a legitimate expectation of privacy that they would be free from governmental intrusion triggered by the stop, the request for identification, and the routine warrant check. Therefore, the court has ruled that the silver and gold jewelry findings seized as a result of the search of the Mercury should have been suppressed as fruits of an illegal detention under *Wong Sun* v. *United States*, 371 U.S. 471 (1963). The State submits that since it has taken the position

that Officer Calabro possessed a reasonable suspicion that the occupants of the automobile which he detained were involved in criminal activity, neither the warrant check nor the five-minute period of time required to conduct it were impermissible.

Given reasonable suspicion based upon objective facts, a police officer has the right to detain a person against his or her will for a brief period of investigation.[10] In fact, Mr. Justice White's concurring opinion in *Terry* v. *Ohio*, 392 U.S. at 34, indicates that:

> There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case [*Terry*], it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation.[11] . . .

In addition, this Court recently stated in the following dictum from *Brown* v. *Texas*, 443 U.S. 47, 51 (1979):

> We have recognized that in some circumstances an officer may detain a suspect briefly for questioning although he

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[10] Preiser, *Confrontations Initiated by the Police on Less than Probable Cause*, 45 Albany L. Rev. 57, 62 (1980).

[11] For references without criticism to Mr. Justice White's concurrence, see *Brown* v. *Texas*, 443 U.S. 47, 53 n.3 (1979); *Michigan* v. *DeFillippo*, 443 U.S. 31, 44-45 (1979); *Dunaway* v. *New York*, 442 U.S. 200, 210 n.12 (1979); *Reid* v. *Georgia*, U.S. , 100 S.Ct. 2752, 2753 n.2 (1980).

> does not have "probable cause" to believe that the suspect is involved in criminal activity, as is required for a traditional arrest. . . . However, we have required the officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. . . .

On January 21, 1981, this Court handed down its opinion in *United States* v. *Cortez*, U.S. , 28 Cr. L. 3051 (Jan. 21, 1981). Mr. Chief Justice Burger wrote that:

> The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of the vehicle here. . . . Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

28 Cr. L. at 3053.

Thus, the State argues that the police have a right and a duty to investigate where they reasonably suspect criminal activity. A brief investigatory stop is proper in furtherance of the legitimate governmental interest in crime detection and prevention.

There are no indicia of deliberate police misconduct in the instant case. As the dissenting justice noted, "[the] length of the detention cannot be measured with stopwatch precision but must depend on the practicalities of the particular situation." *DeMasi*, R.I. , 419 A.2d at 297 (Kelleher, J., dissenting). The police officer conducted a brief investigation during which he verified identification and determined whether any of the three men were subject to an outstanding warrant. Approximately five minutes elapsed while waiting for the results of the N.C.I.C. computer warrant check. This

was not such an unreasonable length of time as to constitute a violation of the respondents' Fourth Amendment rights. The police activity was not unreasonable under the circumstances and no search of the vehicle occurred until a warrant had been obtained. The evidence later obtained is trustworthy and highly reliable. The exclusion of the jewelry findings from evidence as fruit of an illegal detention serves no valid purpose and has no deterrent effect.

Conclusion.

For the reasons stated herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Addendum A.

STATE

v.

RALPH DEMASI.

STATE

v.

LAWRENCE M. LANOUE.

Nos. 78-35-C.A., 79-36-C.A.

Supreme Court of Rhode Island.

Aug. 29, 1980.

Consolidated appeals were brought from defendants' convictions entered in the [286] Superior Court, Providence and Bristol Counties, Weisberger and Orton, JJ., for breaking and entering in nighttime with intent to commit larceny and for stealing goods valued in excess of $500. The Supreme Court, Bevilacqua, C.J., held that: (1) one defendant was not denied right to speedy trial, although 26 months passed between filing of indictment and defendant's trial; (2) police officer did not have sufficient specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted a suspicion that occupants of automobile were or had been engaged in criminal activity justifying police officer's investigatory stop of defendant's vehicle; (3) detention im-

posed for period during which police officers were awaiting result of warrant check on occupants of automobile was unreasonable governmental infringement of defendants' rights protected by the Fourth Amendment; and (4) passenger in automobile could challenge stop and detention pending warrant check.

Appeal sustained; judgments reversed and remanded.

Kelleher, J., dissented and filed opinion.

1. Criminal Law — 577.10(3)

Courts confronted with lack of speedy trial claims are to consider length of delay, reason for delay, defendant's assertion of his right to speedy trial, and prejudice to the accused. Const. Art. 1, § 10; U.S.C.A. Const. Amends. 6, 14.

2. Criminal Law — 577.10(3)

None of four factors used in determining whether a defendant's speedy trial rights have been violated namely, length of delay, reason for delay, defendant's assertion of his right to speedy trial, and prejudice to accused, is either a necessary or sufficient condition to finding of deprivation of right of speedy trial; rather, they are related factors and must be considered together with such other circumstances as may be relevant. Const. Art. 1, § 10; U.S.C.A.Const. Amends. 6, 14.

3. Criminal Law — 577.15(1)

A lengthy delay in bringing defendant to trial, standing alone, is insufficient to establish that the defendant's right to speedy trial has been violated. Const. Art. 1, § 10; U.S.C.A. Const. Amends. 6, 14.

4. Criminal Law — 577.10(5, 8, 10)

Defendant was not denied right to speedy trial, although 26 months passed between filing of indictment and defendant's

trial and his pretrial detention was allegedly prejudicial because parole, work release, and other rehabilitative opportunities were not available to defendant, where delay was occasioned in part by investigation and preparation of other cases pending against defendant which involved serious and complex charges, part of delay was occasioned by defendant whose counsel was unavailable for trial during part of this period, case was continued on one occasion on defendant's request, defendant did not file written motion to dismiss for lack of speedy trial until 20 months after he had made oral motion, and some of pretrial detention of defendant resulted from other indictments pending against him. Const. Art. 1, § 10; U.S.C.A.Const. Amends. 6, 14.

5. Criminal Law — 577.16(9)

A defendant's assertion of his right to speedy trial is entitled to strong evidentiary weight when trial court is considering an alleged deprivation of that right. Const. Art. 1, § 10; U.S.C.A.Const. Amends. 6, 14.

6. Arrest — 63.5(2)

Probable cause is not necessary for temporary investigatory detentions. U.S.C.A.Const. Amend. 4.

7. Arrest — 63.5(6)

At time of initial observation of defendant's automobile weighted down in back, police officer, who was unaware of any burglaries having been committed in area, did not have sufficient specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted a suspicion that occupants of defendant's automobile, which was not exceeding speed limit or proceeding substantially below speed limit, which had tail- [287] lights working and did not have any loud muffler noises and was not pro-

ceeding erratically and was not eluding police officers, were or had been engaged in criminal activity, which would have justified police officer's investigatory stop of defendant's automobile. Const. Art. 1, § 10; U.S.C.A.Const. Amends. 6, 14.

8. Searches and Seizures — 7(12)

Random, discretionary spot checks for driver's license and registration of tide carried out on public streets and highways are unreasonable under the Fourth Amendment absent at least articulable and resonable suspicion that a motorist is unlicensed or that automobile is not registered, or that either vehicle or occupant is otherwise subject to seizure for violation of law; overruling *State* v. *Rattenni*, 117 R.I. 221, 366 A.2d 539, *State* v. *Wilson*, 110 R.I. 740, 297 A.2d 645, *State* v. *Maloney*, 109 R.I. 166, 283 A.2d 34. Gen.Laws 1956, §§ 31-3-9, 31-10-27; Const. Art. 1, § 6; U.S.C.A.Const. Amend. 4.

9. Searches and Seizures — 7(12)

Detention imposed on defendant's automobile for period during which officers were awaiting result of a warrant check was not a reasonable governmental infringement otherwise protected by the Fourth Amendment as there was no evidence of traffic or vehicular violations before police officers stopped automobile, and driver of automobile produced valid driver's license and automobile registration denying officers a reason to suspect that any of occupants were subjects of outstanding warrants. Gen.Laws 1956, §§ 31-3-9, 31-10-27; Const. Art. 1, § 6; U.S.C.A.Const. Amend. 4.

10. Searches and Seizures — 7(26)

Owner and operator of vehicle, who was signaled by police to pull over and was required to produce proper documentation, had standing to challenge both the stop and his detention

pending warrant check. Gen.Laws 1956, §§ 31-3-9, 31-10-27; Const. Art. 1, § 6; U.S.C.A.Const. Amend. 4.

11. Searches and Seizures — 7(26)

Passenger in automobile detained by police officers as they ran warrant check could challenge stop and detention pending warrant check, although investigatory stop may have focussed primarily on operator of vehicle, where officers effectively inhibited free movement of all individuals in car to an equivalent extent, at time when officer requested driver's license and automobile registration from operator, he also requested identification from passengers, and officers took names of all occupants for warrant check. Gen.Laws 1956, §§ 31-3-9, 31-10-27; Const. Art. 1, § 6; U.S.C.A.Const. Amend. 4.

12. Searches and Seizures — 7(26)

Determination of whether all passengers in motor vehicle will always have legitimate expectation of privacy so as to be able to challenge stop of motor vehicle is to be made on case-by-case basis.

Dennis J. Roberts, II, Atty. Gen., Forrest L. Avila, Sp. Asst. Atty. Gen., for plaintiff.

John Tramonti, Jr., Providence, Griffin & Higgins, Kirk Y. Griffin, Geline W. Williams, Boston, Mass., for defendants.

OPINION

BEVILACQUA, Chief Justice.

These are consolidated appeals from the defendants' convictions for breaking and entering in the nighttime with intent

to commit larceny, in violation of G.L.1956 (1969 Reenactment) § 11-8-4, and with stealing goods valued in excess of $500, in violation of G.L.1956 (1969 Reenactment) § 11-41-1.

At approximately 4:10 a.m. on October 8, 1974, Officer Thomas Calabro of the Pawtucket police department was on routine patrol in an industrial section of the city when he noticed a 1968 Mercury at the intersection of Industrial Highway and Division Street. He noticed that the rear end of the car was heavily weighted down and that as the car turned left onto Division Street and crossed over some railroad [288] tracks, the back end scraped the truck causing sparks to fly. He also noticed as the car turned the back seat passenger looked at the police vehicle. At that point Calabro decided to stop the car. Because he temporarily lost sight of the car, however, Calabro radioed to Officer Raymond Zwolenski, another officer in the area, that he wanted the car stopped. A short tete later, both Calabro and Zwolenski regained sight of the Merdury. When they neared the vehidle, the officers turned on their flashing lights, indicating to the car to stop, and the driver pulled over. Calabro approached the vehicle on the passenger's side, Zwolenski on the driver's side. When he reached the stopped vehicle, Zowlenski [*sic*] asked the driver, defendant Lawrence M. Lanoue, for his operator's license and vehicle registration papers. Lanoue produced a valid Rhode Island driver's license and registration card. Calabro and Zwolenski also requested identification from the two passengers, defendant Ralph DeMasi and Edward Sitko. DeMasi identified himself as "Raymond Massey" and gave his date of birth but could produce no identification. Sitko presented a valid Massachusetts driver's license although on another name. In spite of what appeared to be proper identification, the officers decided to extend the detention. The officers radioed police headquarters and requested a National Crime Information Center (NCIC) computer check on the three names. After

about five minutes, headquarters reported the existence of an outstanding arrest warrant for Lanoue in Massachusetts.

After receiving the results of the warrant check from headquarters, the officers sent for a cruiser to transport the handcuffed Lanoue to the station. When the cruiser arrived, one of its officers, Daniel Haynes, identified Ralph DeMasi. DeMasi, who had previously identified himself as "Massey," was also taken into custody, handcuffed, and escorted into the cruiser, apparently for giving false identification. Sitko, the other passenger, drove the Mercury to the station in the company of two police vehicles. Sometime later, at about 6 a.m., the Pawtucket police learned that during the night a burglary had occurred in the Regina Manufacturing Company, a manufacturer of jewelry. At about 9:30 a.m., a judicial magistrate issued a warrant to search the car based on an affidavit by Lt. Norman J. Moreau of the Pawtucket police detective division. When they pried open the locked trunk, the police discovered about 500 pounds of gold and silver jewelry findings later identified as part of 1,200 pounds stolen from the Regina Company earlier that morning.

Both defendants were indicted on April 4, 1975.[1] Both filed motions to suppress evidence seized from the Mercury, and DeMasi filed motions to dismiss for lack of a speedy trial.[2] Before DeMasi's trial in June 1977, his motions were heard and denied. He was convicted before a jury on June 15, 1977. The transcripts of DeMasi's hearings were incorporated into Lanoue's hearing on his motion to suppress. The trial justice denied the motion, which was heard on October 4, 1978, immediately prior to Lanoue's jury waived trial at which he was

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[1] The indictment also charged both defendants with possession of burglar tools in violation of G.L.1956 (1969 Reenactment) § 11-8-7. In both cases, however, the state dismissed this count before trial pursuant to Super.R. Crim.P. 48(a).

[2] Lanoue also filed a motion to dismiss but did not specify grounds for it.

also found guilty. Both defendants appealed, the appeals were consolidated, and exceptions to the rulings on the pretrial motions form the basis of the appeals.

I

Initially, we address DeMasi's argument that he was denied his right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by art. I, sec. 10 of the Rhode Island constitution.

[1, 2] The test for determining whether an accused has been denied his right to a speedy trial was set forth in *Barker* v. *Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 101 (1972), and has been applied by this court in a number of recent cases. *See, e.g., State* v. *Delahunt*, R.I. 401 A.2d 1261 (1979); *State* v. *Roddy*, R.I., 401 A.2d 23 (1979); *State* v. *Crescenzo*, 118 R.I. 662, 375 A.2d 933 (1977). Courts confronted with lack of speedy trial claims are to consider four factors:

1. The length of the delay
2. The reason for the delay
3. The defendant's assertion of his right to a speedy trial, and
4. The prejudice to the accused.

None of the four factors alone is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." *Barker* v. *Wingo*, 407 U.S. at 533, 92 S.Ct. at 2193, 33 L.Ed.2d at 118 (footnote omitted); *see State* v. *Paquette*, 117 R.I. 505, 509, 368 A.2d 566, 568 (1977).

1. Length of delay

[3] DeMasi initially points out that thirty two months elapsed between his arrest on October 8, 1974, and the begin-

ning of his trial on June 13, 1977, and twenty-six months between the filing of the indictment on April 4, 1975, and the trial. A lengthy delay standing alone, however, is insufficient to establish that the right to a speedy trial has been violated. *State* v. *Crapo*, 112 R.I. 729, 734, 315 A.2d 437, 440 (1974). Nonetheless, we find a delay of twenty six months between indictment and trial "presumptively prejudicial," a finding that triggers the necessity for an inquiry into the other three factors. *See Barker* v. *Wingo*, 407 U.S. at 530, 92 S.Ct. at 2192, 33 L.Ed.2d at 117; *State* v. *Delahunt*, R.I., 401 A.2d at 1266; *State* v. *Roddy*, R.I., 401 A.2d at 30.

2. Reason for the delay

[4] In *Barker* v. *Wingo*, *supra*, the Court set out general standards against which a trial court should consider and evaluate the proffered reasons for the delay:

> "[D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay." *Id.* 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117 (footnote omitted).

At the hearing on the first motion to dismiss for lack of speedy trial, held on March 2, 1977, the trial justice was informed that DeMasi was involved in five cases pending in the Superior

Court, all initiated in 1975.[3] DeMasi was indicted in April 1975 on the charges concerning us here. For his alleged participation in the armed robbery of the Marquette Credit Union in Manville, Rhode Island, he was charged in May 1975 with, *inter alia*, conspiracy, armed robbery, and assault with intent to murder. In December 1975, he was charged by information with assault with intent to murder a fellow inmate at the Adult Correctional Institutions (ACI). And finally, on October 28, he was charged in two indictments in a multi-defendant conspiracy case of some complexity, which defense counsel conceded was "not going to be tried in this decade."

DeMasi does not deny that he had other business with the Attorney General's office; however, he argues that the other matters involved an amount of courtroom time insufficient to justify the delay: the Marquette Credit Union case involved only three days of evidentiary hearings in February 1976, and the ACI assault case in November 1976 required only "ten days trial time." Against this background, he also insists that from the time of the arrest, the instant case was, from an investigatory and preparatory viewpoint, "open and shut." Therefore, handling this case and the other matters could not justifiably have required such a delay.

The state indicated at the initial hearing that the Attorney General had assigned priority to DeMasi's cases based on the gravity of the offenses charged. This policy seems to us neither unjustified nor unreasonable. The state's position is that the other cases were more serious and complex and that any delay was occasioned not by the few days of court time required but by the investigation and preparation of these matters, a position that DeMasi does not directly challenge. Although the record leaves us in some doubt regarding precisely how much

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[3] It also appears in the record that in May 1975, DeMasi was surrendered over to Massachusetts authorities on charges pending in that state, although exactly how long he was held there is not clear.

investigatory and preparatory activity the other three matters stirred up during the period under consideration, we presume that, because they admittedly involved serious and complex charges, they consumed a substantial amount of investigatory and preparatory time on the state's part.

The record also indicates that defendant must share some responsibility for the delay. At the hearing on the first motion defense counsel admitted to being unavailable for trial in Rhode Island for five months during the delay because of his engagement in a protracted trial in Massachusetts not involving this defendant. Moreover, at the hearing on the second motion to dismiss for lack of speedy trial held on May 18, 1977, the trial justice observed that DeMasi had requested a continuance from March 22 to March 31, 1977, and that the instant case was not reached for trial on May 16, 1977, as scheduled, because defendant's attorney was engaged in federal court on another matter. Although the state's reasons for delay perhaps are not detailed on the record as fully as might be desired, we do not find any evidence of deliberate attempts to delay DeMasi's trial. Moreover, the reasons offered are at worst "neutral," and in light of the busy years DeMasi had in the Superior Court in 1975 and 1976, very possibly "valid." *See Barker* v. *Wingo*, 407 U.S. at 531, 92 S.Ct. at 2192, 33 L.Ed.2d at 117.

3. Assertion of the right

[5] Although DeMasi made an oral motion for a speedy trial on May 8, 1975, one month after his indictment, he did not file a written motion to dismiss for lack of a speedy trial until January 5, 1977, some twenty months later. After the first written motion was heard and denied, DeMasi filed a second motion to dismiss on May 9, 1977. We recognize that a defendant's assertion of his right to a speedy trial is entitled to strong evidentiary weight when a trial court is considering an

alleged deprivation of that right. *See Barker* v. *Wingo*, 407 U.S. at 531-32, 92 S.Ct. at 2192-93, 33 L.Ed.2d at 117. DeMasi's assertion of that right, however, does not amount to the figurative "banging on the courthouse doors" that we found persuasive in *Tate* v. *Howard*, 110 R.I. 641, 656, 296 A.2d 19, 27 (1972).

4. Prejudice to defendant

Finally, we must assess the prejudice suffered by this defendant as a result of the delay. DeMasi maintains that he was a pretrial detainee at all times during the delay and that this detention was prejudicial because parole, work-release, and other rehabilitative opportunities were not available to him. *See State* v. *Crapo*, 112 R.I. 729, 736-37, 315 A.2d 437, 441 (1974); *Tate* v. *Howard*, 110 R.I. at 656, 296 A.2d at 28. At the hearing on the first motion to dismiss, defense counsel represented to the trial court that defendant had been confined at the ACI in staggered intervals for some fourteen out of the twenty-three months that had elapsed between his indictment in April 1975 and the hearing. Defense counsel also stated during the hearing that it would have been unfair to suggest that defendant's confinement had resulted solely from the instant indictment, a statement that leads us to infer that some portion of the period of pretrial detention had resulted from the other indictments, at least two of which concerned more serious charges than those at issue in this instant appeal.

Having considered all the factors and being persuaded by the state's reasons for the delay and by DeMasi's failure to assert his right promptly, we conclude that DeMasi was not denied his right to a speedy trial.

II

We now turn to the contentions that defendants' motions to suppress should have been granted. These contentions require

us to determine whether the stop of Lanoue's vehicle by the Pawtucket police was reasonable under the Fourth Amendment and art. I, sec. 6 of the Rhode Island constitution. In the proceedings below, the state put forth two alternative grounds as justification for the reasonableness of the stop. On appeal, defendants challenge both grounds; however, the state has argued only one of those grounds. Because the testimony of Officer Calabro inadequately establishes which ground he relied on, we have considered the reasonableness of the stop on both grounds.

The statute relied upon by the state on appeal to support the stop authorizes a peace officer to "detain any person * * whom he has reason to suspect is committing, has committed or is about to commit a crime * * *." General Laws 1956 (1969 Reenactment) § 12-7-1. Of course we must resolve the issue before us by deciding not whether the police conduct was authorized by state law, but whether it was reasonable under the Fourth Amendment. *Cooper* v. *California*, 386 U.S. 58, 61, 87 S.Ct. 788, 790, 17 L.Ed.2d 730, 734 (1967). The defendants strenuously contend that the stop violated the Fourth Amendment standards for reasonable governmental intrusions set out in *Terry* v. *Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In *Terry*, the Supreme Court recognized that "[w]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person" within the meaning of the Fourth Amendment. *Id.* at 16, 88 S.Ct. at 1877, 20 L.Ed. at 903. Balancing the general governmental interest in effective crime prevention and detection against an individual's interest in freedom of movement, the Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.* at 22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906-07.

[6] The state concedes that Officer Calabro did not have probable cause to stop the Mercury. Nevertheless, as *Terry* indicates and as we have recently discussed at length, probable cause is not necessary for temporary investigatory detentions. *State* v. *Halstead*, R.I., 414 A.2d 1138, 1145 (1980). In the interest of effective law enforcement, investigatory stops of individuals, either on foot, *see Terry* v. *Ohio*, *supra*, and *State* v. *Ransdell*, 109 R.I. 320, 285 A.2d 399 (1971), in stationary vehicles, *see Adams* v. *Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), or in moving vehicles, *see United States* v. *Montgomery*, 561 F.2d 875 (D.C. Cir. 1977), and *United States* v. *Robinson*, 536 F.2d 1298 (9th Cir. 1976), have been upheld if "based on a reasonable suspicion that the person detained is involved in criminal activity." *State* v. *Halstead*, R.I., 414 A.2d at 1145. In *Halstead*, we stated that "[t]he Court has also adhered to the requirement that a police officer's reasonable suspicion of criminal activity arise from specific and articulable facts and the reasonable inferences that can be drawn from them." *Id.* 414 A.2d at 1146.

[7] Officer Calabro's decision to radio for assistance and to stop the vehicle was apparently based solely on the fact that at the time he first spotted the Mercury, the back of the car was overweighted and it struck the railroad tracks.[4] An overweighted appearance may result from other normally innocent causes, such as a suspension system in need of repair. *See United States* v. *Brignoni-Ponce*, 422 U.S. 873, 889-90, 95 S.Ct. 2574, 2584, 45 L.Ed.2d 607, 621 (1975) (Douglas, J., concurring). Of course, the sight of a heavily weighted car could combine with other specific objective facts, which taken

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[4] Officer Calabro testified that he had noticed the passenger in the back seat look at his police vehicle as the Mercury turned onto Division Street. While the dissent has placed some emphasis on this fact, we think that it is not unusual that a passenger might simply take note of a nearby police vehicle. *See United States* v. *Montgomery*, 561 F.2d 875, 879 (D.C. 1977).

together in certain circumstances might justify a reasonable suspicion. *Cf. Brinegar* v. *United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949) (heavily weighted car, with several other facts, furnished probable cause). *See also State* v. *Halstead*, R.I., 414 A.2d at 1148 (listing several factors that may contribute to reasonable suspicion). On this evidence alone, however, we cannot say that at the time of the initial observation, Officer Calabro had sufficient "specific and articulable facts" which taken together with rational inferences from those facts reasonably warranted a suspicion that the occupants of the car were or had been engaged in criminal activity.

Furthermore, the officer could point to no additional circumstances occurring between the initial sighting and the actual stop which could be said to have raised his initial hunch to the level of a "reasonable suspicion." In fact, the reverse seems to be evident from the record. The officer testified that he was unaware of any burglaries having been committed in the area. He also testified that Lanoue's car was not exceeding the speed limit or proceeding substantially below the speed limit as in *Halstead*, that the taillights were working, that there were no loud muffler noises, that the Mercury was not proceeding "erratically," that the driver made no attempt to elude the officers, and that at no time did Officer Calabro observe any other sort of traffic or vehicular violations. The Mercury was immediately pulled over when given the signal by the flashing lights on the patrol cars. The objective facts taken together could only support a mere inarticulate hunch that criminal activity was afoot. Such a hunch was insufficient under *Terry* and its progeny to justify the stop of Lanoue's Mercury.

Alternatively, in the proceedings below, but not on appeal, the state relied on two statutes, G.L. 1956 (1968 Reenactment) § 31-10-27 and § 31-3-9, as authority for the stop of the 1968

Mercury on October 8, 1974. Read together, these statutes authorize a police officer to stop a motor vehicle and to request of the driver an operator's license and vehicle registration card.[5] This court has construed these statutes to authorize such stops as part of the duty of the police to ensure compliance with this state's traffic safety laws. *See State* v. *Rattenni*, 117 R.I. 221, 224, 366 A.2d 539, 541 (1976); *State* v. *Wilson*, 110 R.I. 740, 744, 297 A.2d 645, 648 (1972); *State* v. *Maloney*, 109 R.I. 166, 173, 283 A.2d 34, 38 (1971). The defendants contend that to the extent that these cases suggest that the statutes authorize random, purely discretionary stops for license and vehicle registration checks, they are unreasonable under the standards of the Fourth Amendment and art. I, § 6.[6]

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[5] General Laws 1956 (1968 Reenactment) § 31-10-27 provides:

> "License to be carried and exhibited on demand. Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of any peace officer or inspector of the registry and shall, upon request by any proper officer, write his name in the presence of such officer for the purpose of being identified. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest."

General Laws 1956 (1968 Reenactment) § 31-3-9 provides in part:

> "Registration card carried in vehicle (a) Every registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a proper officer."

[6] At the hearing on DeMasi's motion to suppress, the trial justice concluded that *State* v. *Maloney*, 109 R.I. 166, 283 A.2d 34 (1971), "clearly indicates that the officer, even without any specific reason to believe that the operator of the motor vehicle was committing a violation of law, had a right to stop that motor vehicle and ask for license and registration." He also stated that *Maloney, supra*, did not authorize the police to request identification from the passengers, a conclusion with which we concur; however, he did not find that the detention pending the warrant check was illegal.

[8] We note at the outset that the Supreme Court has recently ruled that random, discretionary spot checks for license and registration carried out on public streets and highways are unreasonable under the Fourth Amendment absent "at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law * * *." *Delaware* v. *Prouse*, 440 U.S. 648 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, 673 (1979). Therefore, to the extent that *Rattenni*, *Wilson*, and *Maloney*, all *supra*, impose no limits on the authority and discretion granted to police officers by § 31-10-27 and § 31-3-9, they are overruled by *Prouse*.

The stop at issue here occurred in 1974, more than four years before the *Prouse* decision. The defendants urge us, however, to apply the rule enunciated in *Prouse* retroactively and to invalidate the stop under the *Prouse* rationale. They contend that the court in *Prouse* did not establish a "sharp break in the line of earlier authority," *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481, 499, 88 S.Ct. 2224, 2234, 20 L.Ed.2d 1231, 1244 (1968), and that the decision, to a great extent, relied on and extended principles that had been growing and developing over the years. They also contend that retroactive application of *Prouse* would neither penalize police conduct unfairly nor unduly burden the administration of the criminal justice system. *See Linkletter* v. *Walker*, 381 U.S. 618, 637, 85 S.Ct. 1731, 1742, 14 L.Ed.2d 601, 613 (1965).

[9] We need not resolve the question of retroactivity, however.[7] For even if we assume, *arguendo*, that before *Delaware*

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[7] Although we do not address the issue of the retroactive application of *Delaware* v. *Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), we would point out that in *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), which held roving patrol stops of auto-

v. *Prouse, supra*, § 31-10-27 and § 31-3-9 authorized random, discretionary checks for driver's license and vehicle registration and that such checks were reasonable under the Fourth Amendment, we believe that the continued detention that occurred after Lanoue had produced valid documents was not reasonable under the circumstances. See *People* v. *McGaughran*, 25 Cal.3d 577, 586-87, 601 P.2d 207, 212-13, 159 Cal.Rptr. 191, 196-97 (1979); *cf. United States* v. *Brignoni-Ponce*, 422 U.S. at 881-82, 95 S.Ct. at 2580, 45 L.Ed.2d at 617 (border officers with reasonable suspicion may stop and question aliens, but further detention must be based on consent or probable cause). The record reveals no justification for the actions of the officers in continuing to detain the vehicle and its occupants for several minutes while they requested an NCIC warrant check and awaited the results. The absence of evidence of traffic or vehicular violations before the stop, coupled with the production of valid documents, denied the officers reason to suspect that any of the occupants were subjects of outstanding warrants. We therefore conclude that under these circumstances, the detention imposed for the period during which the officers were awaiting the results of the warrant check was an unreasonable governmental infringement of rights protected by the Fourth Amendment.

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mobiles near the border unreasonable without any suspicion that a vehicle was carrying illegal aliens, the Courted stated in a footnote,

"Border Patrol agents have no part in enforcing laws that regulate highway use, and their activities have nothing to do with an inquiry whether motorists and their vehicles are entitled, by virtue of compliance with laws governing highway usage, to be upon the public highways. Our decision thus does not imply that state and local enforcement agencies are without power to conduct such limited stops [unsupported by reasonable suspicion] as are necessary to enforce laws regarding drivers' licenses, vehicle registration, truck weights, and similar matters." *Id.* at 883 n.8, 95 S.Ct. at 2581 n.8, 45 L.Ed.2d at 618 n.8.

[10] We have no doubt that Lanoue can attack both the stop and the detention pending the warrant check. He was the owner and operator of the vehicle, and it was he who was signaled to pull over and was required to produce proper documentation. He clearly has "standing" to challenge the alleged violations of his Fourth Amendment rights. See *Rakas* v. *Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978); *Jones* v. *United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960). Another question remains, however whether DeMasi, as a passenger in a motor vehicle stopped by police officers claiming to have justification for the stop, has "standing" to challenge the validity of the stop and the subsequent detention pending a warrant check.[8]

In a recent ruling on the Fourth Amendment "standing," the United States Supreme Court reemphasized that Fourth Amendment rights are personal and that in order to invoke the protection of the exclusionary rule, a defendant must demonstrate that governmental conduct has directly infringed his personal rights. *Rakas* v. *Illinois*, 439 U.S. at 133-34, 99 S.Ct. at 425, 58 L.Ed.2d at 394-95. Having rejected the "legitimately on the premises" test of *Jones* v. *United States*, *supra*, as "too broad a gauge for measurement," the Court now requires a defendant to show that he has a legitimate expectation of privacy in an invaded place "so that the Fourth Amendment protects him from unreasonable governmental intrusion into

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[8] The trial justice at DeMasi's hearing did not address this issue because he ruled that the initial stop was reasonable, and he also did not rule on the reasonableness of the subsequent detention. Rather, he ruled that there was no probable cause for DeMasi's arrest, an event that he found did not occur until after Officer Haynes had arrived and identified DeMasi. The trial justice concluded that (1) DeMasi had no "standing" to challenge the search of the trunk of Lanoue's vehicle, a search authorized by a warrant supported by an affidavit alleged to be defective, and (2) the fruits of the search were not a proximate result of the illegal arrest and were therefore not suppressible on that ground.

that place." *Rakas* v. *Illinois*, 439 U.S. at 142, 99 S.Ct. at 429-30, 58 L.Ed.2d at 400.

Although the Court has stated in the context of warrantless searches that an individual has a lesser expectation of privacy in an automobile, *see, e.g., Arkansas* v. *Sanders*, 442 U.S. 753, 761, 99 S.Ct. 2586, 2591, 61 L.Ed.2d 235, 242-43 (1979); *United States* v. *Chadwick*, 433 U.S. 1, 12, 97 S.Ct. 2476, 2484, 53 L.Ed.2d 538, 549 (1977); *Cardwell* v. *Lewis*, 417 U.S. 583, 590, 94 S.Ct. 2464, 2469, 41 L.Ed.2d 325, 335 (1974) (plurality opinion), the Court has nonetheless recognized that the occupants of a moving automobile retain a reasonable interest in personal privacy and has made no general *per se* distinction in the context of investigatory stops between the privacy interest of the owner or driver and the privacy interest of passengers. *See Delaware* v. *Prouse*, 440 U.S. at 662-63, 99 S.Ct. at 1400, 59 L.Ed.2d at 673.

[11, 12] On the facts before us, we believe that although the investigatory stop may have focused primarily on Lanoue as the operator of the vehicle, the officers effectively inhibited the free movement of all three individuals in the car to an equivalent extent. Furthermore, at the time Officer Zwolenski requested the documents from Lanoue, he also asked for identification from the two passengers. And the fact that the officers took the names of all three for the NCIC warrant check can leave but little doubt that each was being personally detained. We conclude that while traveling in the Mercury, all three shared a legitimate expectation that they would be free from the unreasonable governmental intrusion occasioned by the stop, the request for identification, and the warrant check. To hold otherwise here would be to draw artificial, formalistic distinctions not grounded in logic.[9] We therefore

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[9] We do not mean to suggest that all passengers in a motor vehicle will always have a legitimate expectation of privacy so as to be able to challenge a

hold that the evidence seized as the result of the search of the Mercury should have been suppressed in the trials of Lanoue and DeMasi as fruits of an illegal detention. *See Wong Sun* v. *United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *United States* v. *Montgomery*, 561 F.2d 875, 878 (D.C. Cir. 1977); *United States* v. *McDaniel*, 550 F.2d 214, 217 (5th Cir. 1977); *State* v. *Marshall*, R.I., 387 A.2d 1046, 1048-49 (1978).

In view of our conclusion that the stop was unreasonable, we do not address the defendants' other contentions.

The defendants' appeals are sustained, the judgments of conviction are reversed, and the cases are remanded to the Superior Court for further proceedings not inconsistent with this opinion.

WEISBERGER, J., did not participate.

KELLEHER, Justice, dissenting.

The majority's opinion, as far as it relates to the detention of Lanoue's vehicle, causes one to wonder whether it emanated from the same court that only two months ago decided the case of *State* v. *Halstead*, R.I., 414 A.2d 1138 (1980). In *Halstead*, an automobile stop case, we also addressed the question of whether a police officer possessed an articulable and reasonable suspicion that the occupants of a motor vehicle were engaged in criminal conduct. Although I concede that my colleagues have correctly determined that this reasonable suspicion test is applicable to the facts presented by the case before us, I believe that they have applied the test in a manner that runs contrary to both its underlying theory and purpose.

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stop. This determination shall be made on a case by case basis, as the Court suggested in *Rakas* v. *Illinois*, 439 U.S. 128, 147, 99 S.Ct. 421, 432, 58 L.Ed.2d 387, 404 (1978).

Following a lengthy review of the relevant cases, we concluded in *Halstead* that before a police officer may justifiably detain a vehicle for investigatory purposes, she or he must be able to articulate objective factors leading to a reasonable suspicion that "'either the vehicle or an occupant is otherwise subject to seizure for violation of law.'" *State* v. *Halstead*, R.I., 414 A.2d at 1147, *quoting Delaware* v. *Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, 673 (1979). We also noted that this test, based on the pronouncements of the United States Supreme Court in such cases as *Terry* v. *Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), is predicated upon a balancing of the governmental interest in crime prevention and detection against the right of an individual to be free from unwarranted police intrusion. In determining whether an officer possesses the requisite articulable facts and reasonable suspicion, we examine the totality of the circumstances, keeping in mind that the reasonable suspicion standard should not be considered in a vacuum, but rather from the viewpoint of a "prudent, reasonable police officer in light of the facts known to him at the time of the detention." *State* v. *Halstead*, R.I., 414 A.2d at 1148.

Applying these legal principles to the facts presented in *Halstead*, we examined the actions of two officers of the Rahway, New Jersey, police department to determine if they were justified in detaining for purposes of investigation the vehicle in which the defendant was a passenger. While parked at an intersection in a high-crime area at 4:30 a.m., these officers observed the defendant and his companion traveling in a Ryder rental truck with Georgia plates. As they passed through the intersection at a speed of fifteen to twenty miles per hour below the speed limit, the two men stared at the police for approximately five seconds. The officers were sur-

prised to see a rental truck in that area so late at night and thought that the speed of the vehicle was unusual. Suspecting that something was up, the officers followed the truck for a short distance before directing the driver to pull it over to the side of the road.

The incorporation of these circumstances into the reasonable suspicion test led to our conclusion that

> "[t]hese facts, when considered from the vantage point of an experienced police officer whose duty it is to be attuned to unusual circumstances, could very well create a reasonable suspicion that the occupants of the truck were engaged in some sort of criminal activity. The personal knowledge and experience of the officers are important factors that may allow an officer reasonably to infer from observation of otherwise innocuous conduct that criminal activity is imminent or is taking place. In light of the officers' knowledge of the character of the neighborhood and of the usual traffic patterns for that time of night, as well as the unusual behavior of the occupants, we believe that their suspicions were reasonable. * * * Given the reasonable suspicion that the officers possess, in this instance the state's interest in crime detection outweighed the individual's right to be free from the intrusions on his liberty that accompanied the investigatory stop." *Id.* 414 A.2d at 1148-49.

Comparing the facts of *Halstead* to those of the case before us, I am of the firm belief that the articulable facts available to Officer Calabro prior to his detention of Lanoue's automobile make out a stronger case for reasonable suspicion than did those facts available to the New Jersey officers. At four o'clock in the morning, Calabro was traveling east on Division Street

in the industrial area of Pawtucket when he observed three men in a 1968 Mercury driving south on Industrial Highway. The vehicle pulled out in front of him, turned left onto Division Street, and crossed over a set of railroad tracks. Calabro surmised that the Mercury was heavily loaded, for the back end scraped the tracks, causing sparks to fly. As the Mercury proceeded over the tracks, a passenger in the back seat looked back at the patrol car. His suspicions aroused, Calabro attempted to follow this vehicle as it proceeded to the end of Division Street and turned right onto York Avenue. Calabro testified that he waited for a truck to pass and proceeded to York Avenue, but

> "the vehicle had vanished. I couldn't find it. * * * I took the first left off York Avenue, went down to Burgess Street, and it just happened that their vehicle came out two streets * * * farther south than mine, but running parallel with me. * * * At that time they took a right and I took a right and they took a left. I also took a left, and we proceeded now toward Newport Avenue."

During these maneuvers, Calabro noticed that the passenger in the back seat continued to turn around and look back. Calabro stated that before he signaled the vehicle to pull over, it appeared as though the driver was attempting to elude him.

Thus, in this case the officer observed three men in a heavily laden vehicle traveling at 4 a.m. in an industrial area. Although the majority refers to these facts in the opinion, it overlooks the fact that the back seat passenger, after his initial backward glance, continued to look back at the patrol car, as well as Officer Calabro's belief that the Mercury was attempting to elude him. Given the set of circumstances described by

Calabro under oath, I am perplexed by the majority's statement that Calabro's decision to stop the vehicle was "apparently based *solely* on the fact that at the time he first spotted the Mercury, the back of the car was overweighted and struck the railroad tracks." (Emphasis added.) This conclusion must be considered in light of the majority's comment that "[o]f course, the sight of a heavily weighted car could combine with other specific objective facts, which taken together in certain circumstances, could support a reasonable suspicion." This comment takes on added significance when one considers the numerous factors related by Officer Calabro in describing his efforts to keep the Mercury under surveillance as he and Lanoue played a game of motorized hide-and-seek.

Measuring the suppressionhearing evidence against the standards set forth in *Halstead* and the United States Supreme Court cases upon which this decision rests, I can only conclude that an officer such as patrolman Calabro could reasonably suspect that the trio in the Mercury were leaving with the loot after burglarizing one of the many manufacturing plants located within this particular section of Pawtucket. The views expressed by the majority cast a substantial shadow over our pronouncements in *Halstead*, wherein we stressed that the totality of the circumstances must be examined from "the vantage point of an experienced police officer whose duty it is to be attuned to unusual circumstances. * * *" *See United States* v. *Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), and *Brown* v. *Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979).

Officer Calabro typifies the "experienced police officer" alluded to in *Halstead*. The record indicates that at the time he detained Lanoue and DeMasi he had been patrolling the streets of Pawtucket for seven years. At the suppression hearing, he told the Presiding Justice that when the names of the three detainees were transmitted to NCIC, "it came back a

hit on Mr. Lanoue." Calabro's "hit" language and his seven years on the street qualified him, in my opinion, as one of those officers who, because of their experience, can reasonably "infer from observation of otherwise innocuous conduct that criminal activity is imminent or is taking place." I submit that police officers attempting to distinguish *Halstead* from this case will find themselves in the same state of bewilderment which gave rise to this dissent.

A final comment is directed toward the majority's conclusion that once Lanoue had produced an apparently valid license and registration and the passengers had identified themselves, the officer's further detention of the suspects pending a warrant check was an unreasonable intrusion upon their Fourth Amendment rights. Since I have taken the position that Officer Calabro did indeed possess a reasonable suspicion that the occupants of the vehicle he detailed [*sic*] were involved in criminal activity, I cannot agree that either the warrant check or the five minute time period required to conduct it was impermissible. *Terry* v. *Ohio* and its progeny contemplate that once an officer has a reasonable suspicion that criminal activity is afoot, a brief investigatory stop is proper in furtherance of the governmental interest in crime detection and prevention. The length of the detention cannot be measured with stopwatch precision but must depend on the practicalities of the particular situation. Officer Calabro conducted a brief investigation in order to verify the identities of the three men and to determine whether any of them were subject to an outstanding warrant. The time required to complete this check is necessarily limited by our present state of technology, and I do not believe that the five-minute period spent at curb side while awaiting the results of the 4 a.m. check was such an unreasonable length of time as to constitute a violation of the suspects' Fourth Amendment rights.